

corresponding to a radius of the substantially circular elevated obstruction, and wherein said third edges and fourth edges thereof extend substantially radially outward from said first edges thereof.

46. (New) The method of claim 42, wherein said ramp segments are elastomeric.

47. (New) The method of claim 46 wherein said ramp segments include a metal core.

48. (New) The method of claim 42, wherein said ramp segments further comprise fastener openings for receiving fasteners therethrough to secure said ramp segments to the roadway while in use.

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#### REMARKS

The two-month deadline for filing this Response to the Final Office Action in order to receive an Advisory Action fell on Sunday, August 4, 2002. Accordingly, this Response is being filed by Express Mail on Monday, August 5, 2002, which is still within the two-month time period of the June 4, 2002 mailing date of the Final Office Action. *See* 37 C.F.R. §§ 1.7 and 1.10.

Claims 27 and 30 have been amended to provide proper antecedent basis for the term "substantially linear elevated obstruction." Accordingly, it is believed the Office's rejections of claims 27 and 30 under 35 U.S.C. § 112, second paragraph with respect to indefiniteness have been overcome.

Claims 28 and 31 have been amended to provide proper antecedent basis for the term "substantially circular elevated obstruction." Accordingly, it is believed the Office's rejections

of claims 28 and 31 under 35 U.S.C. § 112, second paragraph with respect to indefiniteness have been overcome.

The Office has rejected claims 33 and 37 under 35 U.S.C. § 112, second paragraph, as being vague in definition due to use of the term "relatively heavy material." Claims 33 and 37 were amended to replace the term "relatively heavy material" with "metal." Claims 34 and 38 have been cancelled. Accordingly, it is believed the Office's rejections of claims 33 and 37 under 35 U.S.C. § 112, second paragraph with respect to indefiniteness have been overcome.

The Office rejects "[c]laims 25, 26, 28, 29, 31-33, 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner (U.S. Patent 5,308,188) in view of Rech (U.S. Patent 4,373,306). Office Action, p. 3. Applicant respectfully traverses the Office's obviousness rejection.

"In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1447 (Fed. Cir. 1992); 35 U.S.C. § 132. "The patent applicant may then attack the Examiner's *prima facie* case determination as improperly made out, or the applicant may present objective evidence tending to support a conclusion of nonobviousness." *In re Fritch*, 23 U.S.P.Q. 2d at 1783. "[T]he presence or absence of the *prima facie* case of obviousness controls the need for the applicant to adduce rebuttal evidence of unobviousness." *In re Dillon*, 16 U.S.P.Q. 2d 1788, 1788-89 (Fed. Cir. 1990) (en banc) (Newman, J., dissenting), *cert. denied sub nom. Dillon v. Manbeck* 500 U.S. 904 (1991).

**I. The Office has failed to carry its burden of establishing a *prima facie* case of obviousness based on the cited references.**

The Office states:

Shaftner discloses the claimed invention except for making the ramp from a plurality of segments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ramp from a plurality of segments, since it has been held that making an old device portable or movable without producing any new and unexpected results involves only routine skill in the art.

Office Action, p. 3 (citing *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952)).

With the above statement, the Office is clearly admitting that Shaftner fails to disclose anything but a single-piece ramp, but then the Office makes an unsupported leap in reasoning that even though Shaftner provides no motivation or teaching to provide a segmented ramp, that to do so would be obvious because it allegedly involves only routine skill. For the following reasons, the Office's obviousness rejection based on this line of reasoning is improper.

First, the Office must consider the claimed invention as a whole, including the distinguishing features of Applicant's invention over the prior art and the advantages achieved by Applicant's claimed invention over the prior art. *In re Wright*, 848 F.2d 1216, 6 U.S.P.Q.2d 1959 (Fed. Cir. 1988) ("The problem solved by the invention is always relevant. The entirety of a claimed invention, including the combination viewed as a whole, the elements thereof, and the properties and purpose of the invention, must be considered.") *overruled on other grounds by*, *In re Dillon*, 919 F.2d 688, 16 U.S.P.Q.2d 1897 (Fed. Cir. 1990).

Claim 25 specifically requires a ramp comprised of a plurality of individual interlocking ramp segments wherein -- "opposing side edges [of the ramp segments] having complementary coupling formations adapted for removably interlocking with said opposing side edges of another

one of said adjacently disposed first ramp segments . . . whereby said plurality of individual, adjacently disposed, removably interlocking said first ramp segments will form a temporary ramp assembly such that vehicles traveling on the roadway ride up and over the elevated obstruction without damage."

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As disclosed on page 8 of Applicant's specification, the above recited structural limitations of Claim 25 enable Applicant's invention to achieve new and unexpected results, including the ability to use large ramps with a more gradual slope for use on high-speed roadways while at the same time (1) enabling these large ramps to be easily transportable in the back of a pickup truck which would not otherwise be possible; (2) enabling a single laborer to quickly and easily install and remove these large ramps without the need for lifting equipment or other specialized equipment; and (3) ensuring that the ramp segments are securely locked together and will not come apart during use. In the Background of Applicant's specification, Applicant clearly explained the need for these features and the inability of the Shaftner ramps to achieve these goals and advantages.

By not acknowledging the fact that Shaftner does not even consider the problems recognized by Applicant, the Office makes the unsupported leap to its next erroneous conclusion, i.e., the motivation to combine Rech '306 with Shaftner '188.

In concluding that it would be obvious to combine Rech '306 with Shaftner '188, the Office improperly defines the problem recognized and solved by the Applicant in terms of its solution. However, as held by the Federal Circuit:

Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness . . . By importing the ultimate solution into the problem facing the inventor, the district court adopted an overly narrow view of the scope of the prior art. It also infected the district court's determinations about the content of the prior art. . . . By defining the inventor's

problem in terms of its solution, the district court missed this necessary antecedent question, namely, whether the prior art contains a suggestion or motivation to combine references to form a trend.

*Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 45 U.S.P.Q.2d 1977, 1981-82 (Fed. Cir. 1998).

By defining the inventor's problem in terms of its solution, the Office misses the necessary antecedent question, namely, whether the prior art contains a suggestion or motivation to combine references to form a trend. As identified above, Shaftner is completely devoid of any discussion of providing a ramp comprised of individual interlocking segments. Furthermore, the Office cites to no trend upon which it can rely to supply the necessary motivation or suggestion to combine these references. In fact, looking at the time line between the 1983 issuance date of the Rech '306 patent and the 1994 issuance date of the Shaftner '188 patent, just the opposite is true. The Rech '306 invention was publicly available for over eleven years prior to the issuance of the Shaftner '188 patent. Yet Shaftner failed to even consider disclosing a manhole ramp comprised of a plurality of individual interlocking segments. If it was so obvious, as argued by the Office, to make a temporary ramp comprised of individual interlocking ramp segments, with all the beneficial features thereof, why then would Shaftner not recognize or disclose such an alleged obvious modification of his single-piece ramp in light of all the features and advantage which a segmented ramp has to offer? The answer is simple, there was no such "trend" and to do so was un-obvious.

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The question is not whether the Shaftner ramps could be segmented, "but whether it was obvious to do so in light of the relevant factors." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 43 U.S.P.Q. 2d 1294, 1297 (Fed. Cir. 1997). "It is insufficient to establish obviousness that the

separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Id.*

In an effort to get around the requirement for the "motivation to combine" Shaftner '188 with Rech '306, the Office attempts to assert that one of ordinary skill in the art need employ nothing more than routine skill to make a formerly integral structure into various elements. Applicant disputes that such an act requires only routine skill. However, even if routine skill is all that is required, the Office's argument is circular and therefore improper. In order to employ the alleged "routine skill" one of ordinary skill must first have been motivated to employ that routine skill. Thus, the Office fails to recognize an important consideration, namely – that "it does not negate patentable invention merely to establish that a desirable goal, once perceived, could have been reached by the exercise of routine skill. Patentable ingenuity may be involved in the perception of the goal." *Plantronics, Inc. v. Roanwell Corp.*, 403 F. Supp. 138, 153, 187 U.S.P.Q. 489 (S.D.N.Y. 1975) (citing *Timely Products Corp. v. Stanley Arron*, 523 F.2d 288 (2d Cir. 1975)); *In re Zurko*, 42 U.S.P.Q. 2d 1476, 1479 (Fed. Cir. 1997) ("a patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified."); *In re Nomiya*, 184 USPQ 607, 612 (CCPA 1975) ("that a patentable invention may lie in the discovery of the source of the problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of the invention under 35 U.S.C. § 103."); *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) (it is error to focus "solely on the product created, rather than on the obviousness or nonobviousness of its creation") (quoting *General Motors Corp. v. U.S. Int'l Trade Comm'n*, 687 F.2d 476, 483, 215 U.S.P.Q.

484, 489 (CCPA 1982), *cert. denied*, 459 U.S. 1105 (1983)). In fact one court has stated that "[e]xperience has shown that some of the simplest advances have been the most non-obvious." *Van Veen v. United States*, 156 USPQ 403, 405 (Ct. Cl. 1967); *Arkie Lures*, 43 U.S.P.Q. 2d at 1297 ("Ready recognition of the merits of a new product does not establish obviousness.").

Furthermore, in presuming a motivation to combine Rech '306 with Shaftner '188, it is submitted that the Office is reaching its obviousness conclusion by improperly assigning a high level of skill to the ordinary artisan in the field of road construction and repair. Such an invocation of a high level of skill is improper without explaining what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination. *In re Rouffet*, 47 U.S.P.Q. 2d 1453, 1458 (Fed. Cir. 1998). The Office is presumed to be improperly using hindsight when it does not explain the specific understanding or principle within the knowledge of a skilled artisan that would motivate one with no knowledge of the applicants invention to make the combination of the cited references. *Id.* As identified above, "[i]t is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures*, 43 U.S.P.Q. 2d at 1297.

Rech '306 is directed toward the field of "duckboard as used, for example, on airplane runways or in a factory yard as a track for wheeled vehicles." Rech '306 at col. 2, lines 17-18. Accordingly, it does not seem likely that one involved in the field of road construction seeking a solution to the problem of providing temporary ramps for use on roadways under construction would turn to the art of duckboard landing mats used on airplane runways or in factory yards as a track for wheeled vehicles for suggestions.

Based upon the foregoing it is clear that the Office has impermissibly used Applicant's claimed invention as an instruction manual or "template" to pick and choose among isolated disclosures in the prior art to piece together the Applicant's claimed invention in order to render it obvious. *In re Fritch*, 23 U.S.P.Q. 2d at 1784. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures*, 43 U.S.P.Q. 2d at 1297.

In the Office's attempt to substantiate its application of hindsight in order for it to allege that Applicant's claimed invention was obvious over Shaftner '188 in view of Rech '306, the Office asserts:

[I]t must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning . . . so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure . . . ."

Office Action at p. 6 (citing *In re McLaughlin*, 443 F.2d 1392, 170 U.S.P.Q. 209 (CCPA 1971)).

First, as identified above, the Office cannot properly assert that it is relying only on knowledge within the level of ordinary skill at the time of the claimed invention without explaining the specific understanding or principle within the knowledge of a skilled artisan that would motivate one with no knowledge of the applicants invention to make the combination of the cited references. *In re Rouffet*, 47 U.S.P.Q. 2d at 1458.

Second, it has already been established that: (1) the Office used improper hindsight to define the problem discovered by the Applicant in terms of its solution; (2) the Office committed error by focusing solely on the Applicant's claimed invention, rather than on the obviousness or nonobviousness of its creation; (3) the Office failed to recognize and properly consider the new

and unexpected results achieved with Applicant's invention; and (4) the Office improperly assigning a lofty level of skill to the ordinary artisan in the field of road construction and repair to conclude that the ordinary artisan would be motivated to combine Rech '306 with Shaftner '188 to produce the Applicant's invention.

Third, the Office's reliance on the statement *In re McLaughlin* in support of its position is weak, at best, in view of more recent Federal Circuit decisions which soundly reject any use of hindsight to reach an obviousness conclusion. See, e.g., *In re Rouffet*, 149 F.3d 1350, 47 U.S.P.Q. 2d 1453, 1458 (Fed. Cir. 1998) ("This court forbids the use of hindsight in the selection of references that comprise the case of obviousness.").

Finally, the Office's reliance on *In re Lindberg* to support of its position that "making a device portable or movable without producing any new and unexpected result involves only routine skill in the art" is also unavailing. Office Action at pp. 3, 4 and 7. In *In re Lindberg*, the patent applicant was attempting to assert that his self-propelled agricultural sprayer was a non-obvious improvement over the prior art agricultural sprayers pulled by a tractor -- there apparently being no other distinguishing features between the applicant's claims and the cited prior art. *Id.* at 25-26. Moreover, the claims in issue did not even recite the features upon which the applicant was attempting to rely on appeal. *Id.* at 26.

However, as identified above, unlike the facts in *In re Lindberg*, Applicant specifically claims structural limitations not disclosed in Shaftner. In particular, Applicant's claim 25 does not simply claim a ramp comprising a plurality of segments as asserted by the Office. Rather claim 25 specifically requires a ramp comprised of a plurality of individual interlocking ramp segments wherein -- "opposing side edges [of the ramp segments] having complementary coupling formations adapted for removably interlocking with said opposing side edges of another

one of said adjacently disposed first ramp segments . . . whereby said plurality of individual, adjacently disposed, removably interlocking said first ramp segments will form a temporary ramp assembly such that vehicles traveling on the roadway ride up and over the elevated obstruction without damage."

Accordingly, because Shaftner is completely devoid of any teaching of providing a segmented ramp, let alone providing ramp segments having coupling formations in opposing side edges of abutting ramp segments, the Office's attempt to rely on *In re Lindberg* in support of its position that Applicant is simply attempting to make the ramp portable or movable without creating any new or unexpected results is erroneous. Particularly in view of the fact that Applicant's invention does achieve new and unexpected results as previously identified.

Similarly, the Office's attempt to rely on *Nerwin v. Erlichman*, 168 U.S.P.Q. 177 (Bd. Pat. Interferences 1969) in support of the proposition that "case law teaches that it has been held that construction a formerly integral structure into various elements involves only routine skill in the art" is equally unavailing. See Office Action at p. 7. There is no statement whatsoever in *Nerwin v. Erlichman* which could properly be considered as supporting the proposition for which the Office cites this case. The only statement in that case which could even be considered remotely related to this issue is the statement wherein the Board stated—"The mere fact that a given structure is integral does not preclude its consisting of various elements." *Id.* at 179. Such statement relates to an entirely different matter to that asserted by the Office. Therefore, the Office has no support for assertion that constructing a formerly integral structure into various elements involves only routine skill in the art, particularly in view of the new and unexpected results achieved by Applicant's invention.

Based on the foregoing, the Office fails to carry its burden of establishing a *prima facie* case of obviousness based on the cited references. Accordingly, the Office should withdraw its rejections of claims 25, 26, 28, 29, 31-33, 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner '188 in view of Rech '306, its rejection of claims 27 and 30 further in view of Brown '442, its rejection of claims 33 and 37 (formerly, claims 34 and 38, now cancelled) further in view of Wright '628, and claims 35 and 39 further in view of Brown '442.

**II. Even if the Office's maintains that it has carried its burden of establishing a *prima facie* case of obviousness, Applicant's overwhelming evidence of secondary considerations of non-obviousness is more than sufficient to rebut the Offices *prima facie* case.**

As held by the Federal Circuit:

[E]vidence of secondary consideration may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not. It is to be considered as part of all the evidence, not just when the decision-maker remains in doubt after reviewing the art.

Thus, when difference that may appear technically minor nonetheless have a practical impact, particularly in a crowded field, the decision-maker must consider the obviousness of the new structure in this light. Such objective indicia as commercial success, or filling an existing need, illuminate the technological and commercial environment of the inventor, and aid in understanding the state of the art at the time the invention was made.

*Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 20 U.S.P.Q.2d 1746, 1752 (Fed. Cir. 1991).

- A. **The fact that no others have ever made segmented temporary ramps despite the Shaftner '188 disclosure and the Rech '306 disclosure being available for over 8 years and 20 years, respectively, weighs in favor of a finding of non-obviousness.**

The single-piece manhole ramps of the Shaftner '188 patent are being manufactured and sold under an exclusive license by Work Area Protection Corporation (WAPC). Koch Aff. ¶ 19. WAPC purports to be the "international leader in traffic control and work zone safety devices." Koch Aff. ¶ 19 citing Ex. B. But yet, despite the fact that the disclosures of the Rech '306 and Shaftner '188 have been publicly known for nearly twenty years and eight years respectively, neither WAPC nor any other manufacturer, has ever offered a manhole ramp or butt-joint ramp comprised of segmented interlocking ramp segments for use on a roadway surface during road repair or construction operations as disclosed and claimed by Applicant. Koch Aff. ¶ 21-23. Accordingly, the fact that the Shaftner/WAPC ramps have been used for years in the industry and the fact that the disclosure of Rech '306 has been publicly available for nearly twenty years without anyone combining their properties weighs in favor of non-obviousness of the combination. *See, e.g., Arkie Lures, Inc. v. Gene Larew Tackle, Inc.* 43 U.S.P.Q. 2d 1294 (Fed. Cir. 1997).

**B. Applicant's invention has achieved industrial respect from the international leader in traffic control and work zone safety devices.**

The first time Applicant showed his invention to WAPC, its Vice President of product account development made an offer to obtain an exclusive license of Applicant's invention. Koch Aff. ¶ 24. Negotiations with WAPC to obtain a license of Applicant's invention are ongoing. Koch Aff. ¶ 24. This fact alone is compelling evidence that Applicant's invention is a non-obvious improvement over the single-piece manhole ramps. *See, e.g., Arkie Lures, Inc. v. Gene Larew Tackle, Inc.* 43 U.S.P.Q. 2d at 1297 (licensing activity "highly probative of the issue of nonobviousness."). Furthermore, this fact alone demonstrates that those involved in the particular market in which Applicant's invention pertains consider Applicant's invention a significant advance over the single-piece ramps, so much so that the industry leader wishes to

obtain an exclusive license. Additionally, this fact alone supports a finding that Applicant's invention fulfills an existing need in the industry not satisfied by the existing single-piece ramps available in the market.

**C. Applicant's invention has achieved significant commercial success.**

In little more than twelve months, Applicant's company has sold over 147 butt-joint ramp segments and manhole ramp segments to various road repair and construction contractors in the central Illinois area, resulting in gross revenues of over \$52,000.00. Koch Aff. ¶ 26. These sales were a direct result of the purchasers desiring the features and advantages of Applicant's invention compared to the single-piece ramps currently available on the market. Koch Aff. ¶¶ 27-28; Rowell Aff. ¶¶ 5-9; Naeger Aff. ¶¶ 7-13; Birk Aff. ¶¶ 5-11; Emlen Aff. ¶¶ 5-9. One of the affiants, who has over thirty years of experience in the field of road repair and construction declares that Applicant's segmented ramps will become "the standard in the industry." Rowell Aff. ¶ 17.

**D. Those skilled in the field of road repair and construction consider Applicant's invention a significant improvement in the industry.**

The persons in the industry who have actually seen and used Applicant's invention consider Applicant's invention to be a significant improvement over the conventional asphalt pavement ramps and a significant improvement over the single-piece Shaftner ramps. Rowell Aff. ¶ 14; Naeger Aff. ¶ 18; Birk Aff. ¶ 16; Emlen Aff. ¶ 14.

**E. Applicant's invention satisfies a long-felt but unresolved need in the industry.**

The persons in the industry who have actually seen and used Applicant's invention declare that Applicant's invention fulfills a long-felt but unresolved need in the road construction industry which is not satisfied by the single-piece Shaftner/WAPC ramps. Rowell Aff. ¶ 15; Naeger Aff. ¶ 19; Birk Aff. ¶ 17; Emlen Aff. ¶ 15.

**F. Applicant's invention has achieved unexpected results.**

The persons in the industry who have actually used Applicant's invention have achieved new and unexpected results. Specifically, these persons declared that they have been able to achieve a competitive advantage over contractors that continue to use conventional asphalt pavement ramps. Rowell Aff. ¶ 16; Naeger Aff. ¶ 20; Birk Aff. ¶ 18; Emlen Aff. ¶ 16. Furthermore, even if the single-piece Shaftner/WAPC manhole ramps were available in a more gradual slope such as 1:20 or 1:50, these persons declared that they would be able to maintain their competitive advantage because Applicant's invention allows the ramps to be (1) quickly and easily installed and removed by a single laborer without the need for lifting equipment or other specialized equipment to install and remove the ramps, and (2) easily transported in segments for re-use on another job site in a conventional pickup truck bed. Rowell Aff. ¶¶ 9, 12, 15; Naeger Aff. ¶¶ 16, 19; Birk Aff. ¶¶ 14, 17; Emlen Aff. ¶¶ 9, 15. See e.g., *Perkin Elmer Corp. v. Comutervision Corp.*, 221 U.S.P.Q. 669, 674 (Fed. Cir.), cert. denied., 469 U.S. 857, 225 U.S.P.Q. 792 (1984) (evidence of non-obviousness includes the patented invention achieving unexpected results).

**G. Applicant's invention has achieved industry acclaim.**

The persons in the industry which have actually used Applicant's invention praise Applicants invention as a significant improvement in the industry. Rowell Aff. ¶¶ 15-17; Naeger Aff. ¶¶ 17-20; Birk Aff. ¶¶ 15-18; Emlen Aff. ¶¶ 13-16. *Perkin Elmer*, 221 U.S.P.Q. at 674 (evidence of non-obviousness includes industry respect and acclaim).

### **III. CONCLUSION**

Based upon the foregoing, even if the Office maintains that it has met its burden of establishing a *prima facie* case of obviousness (which the Applicant disputes for the reasons identified above), the objective evidence of non-obviousness presented herewith clearly establishes that the Office's *prima facie* evidence has been rebutted. Accordingly, the Office's rejection of claims 25, 26, 28, 29, 32, 33, 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner '188 in view of Rech '306 should be withdrawn.

The Office's rejection of dependent claims 27 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner in view of Rech as applied to claims 26 and 29 and further in view of Brown '442 should also be withdrawn for the same reasons.

Claims 34 and 38 have been cancelled. To the extent that the Office maintains its rejection of claims 33 and 37 on the same grounds as identified for claims 34 and 38 as being unpatentable over Shaftner in view of Rech and further in view of Wright '628 should also be withdrawn.

The Office's rejection of dependent claims 35 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner in view of Rech as applied to claims 25 and 29 and further in view of Brown '442 should also be withdrawn.

Claims 40 and 41 have been cancelled.

New independent claim 42 has been added and is drawn to a method of constructing a roadway using segmented ramps having substantially the same structural limitations as identified in Claim 25. Therefore, Claim 42 should be allowable over the cited references for the reasons identified above, as should dependent claims 43-48. Specifically, the claimed steps of claim 42

constitute patentable subject matter and are new and nonobvious over the steps which would be performed using the single-piece ramps of Shaftner '188 for constructing a roadway.

Accordingly, Applicant respectfully requests allowance of claims 25-33, 35-37, and 42-48.

Respectfully submitted,

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Date: August 5, 2002

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#### CERTIFICATE OF EXPRESS MAILING

Pursuant to 37 CFR 1.10, I hereby certify that this Amendment in U.S. Application Serial No. 09/553,492, is being deposited with the U.S. Postal Service by Express Mail, Post Office to Addressee service, addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date of deposit and under the mailing label number indicated below.

Date of Deposit: August 5, 2002

  
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